IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3726 OF 2007

Jinappa Kallappa Magdum and ors. ..Petitioners.
Vs.
Shri. Satish Narasu Magdum and anr. ..Respondents.

Mr.P.D.Dalvi for the Petitioners.
Mr.N.J.Patil for the Respondent No.1.

CORAM : A.M.KHANWILKAR,J.
DATED : July 12, 2007.

P.C.

1. Heard counsel for the parties.

2. Rule. Rule made returnable forthwith, by consent. Mr.Patil waives notice for the contesting respondent No.1 who is plaintiff in the original suit. The respondent No.2 is the wife of the respondent No.1. Mr. Patil appearing for the respondent No.1 fairly states that he will advise the respondent No.1 to impress upon the respondent No.2 that the order that will be passed in this petition be accepted as it is. On the above assurance, matter is heard forthwith for final disposal.

3. This writ petition takes exception to the Judgment and order passed by the District Judge-I, Ichalkaranji dated 12.12.2006 in Misc.Civil Appeal No.34 of 2006. The background in which the present petition has been

filed before this court is that the respondents have instituted civil suit for injunction against the petitioners. In the said suit, the petitioners asserted that they have right of way from the portion of the land owned and occupied by the respondents. The petitioners have relied upon the decision of the Mamlatdar dated 20.7.2006 which supports the claim of the petitioners. The Trial Court as well as the Appellate Court, notwithstanding the said order of the Mamlatdar, proceeded to grant injunction as prayed for, in favour of the respondents. In other words, the effect of that order of injunction passed by the Civil Court is to restrain the petitioners from enjoying the right of way, which claim has been accepted by the Mamlatdar in favour of the petitioners under its order dated 20.7.2006. The Appellate Court has also observed that the order passed by the Mamlatdar was ultra vires because the civil court can decide such issue and the Mamlatdar has no jurisdiction to decide such type of civil right of the parties. This statement of law expressed by the Appellate Court is clearly in ignorance of the statutory provisions contained in Section 143 of the Maharashtra Land Revenue Code, 1966 read with powers of the Mamlatdar to grant injunction in exercise of powers under Section-5(2) of the Mamlatdar Courts' Act,1906. The said section-143 reads as under :

Section-143 (1)- The Tahsildar may inquire into and decide claims by persons holding land in a survey number to a right of way over the boundaries of other survey numbers.

(2) In deciding such claims, the Tahsildar shall have regard to the needs of cultivators for reasonable access to their field.

(3) The Tahsildar's decision under this section shall, subject to the provisions of sub section (4) and (5), be subject to appeal and revision in accordance with the provisions of this Code.

(4) Any person who is aggrieved by a decision of the Tahsildar under this section may, within a period of one year from the date of such decision, institute a civil suit to have it set aside or modified.

(5) Where a civil suit has been instituted under sub section (4) against the Tahsildar's decision, such decision shall not be subject to appeal or revision.

Section 5(2) of the Mamlatdars' Courts Act,1906 reads as under:

(2) The said Court shall also, subject to the same provisions, have power within the said limits, (where any impediment referred to in sub-section(1) is erected or an attempt has been made to erect it, or), when any person is otherwise than by due course of law disturbed or obstructed, or when an attempt has been made so to disturb or obstruct any person, in the possession of any land or premises used for agriculture or grazing, or trees, or crops, or fisheries, or in the use of water from any well, tank, canal or water course, whether natural or artificial used for agricultural purposes, or in the use of roads or customary ways thereto, to issue an injunction to the person (erecting or who has attempted to erect such impediment, or causing, or who has attempted to cause, such disturbance or obstruction, requiring him to refrain (from erecting or attempting to erect any such impediment or), from causing or attempting to cause any further such disturbance or obstruction."

4. There is one development which has taken place after the institution of the present petition. The respondent has placed on record the order passed by the Revisional authority setting aside the order of the Mamlatdar dated 20.7.2006. This has been done by the Revisional authority under its order dated 20.3.2007. Indeed, the Revisional authority had no option but to abide by the opinion of the civil court (District Judge-I), Ichalkaranji.

5. In my opinion, in the fact situation of the present case, appropriate order that needs to be passed to do the substantial justice between the parties, is to clarify the position that the question regarding right of way will have to be answered only by the statutory authority in exercise of powers under Section-143 of the Maharashtra Land Revenue Code, 1966. If the said authority accepts the plea of the petitioners that there is right of way from the suit land, by virtue of Section 5(2) of the Mamlatdar Court's Act, it is empowered to issue an order of injunction against the respondents forbidding the respondents from interfering with the right of way of the petitioners. Accordingly, it is clarified that the injunction which has been granted by the civil court would operate only till such time the competent authority decides the issue of right of way at

the instance of the petitioners. If the said authority accepts the claim of the petitioners in regard to the the land held and possessed by the respondents, would be free to pass an order of injunction against the respondents to effectuate the right of the petitioners which has been so determined. In that case, the order of injunction passed by the civil court will stand effaced and dissolved.

6. It is clarified that all questions in relation to the issue of right of way claimed by the petitioners are kept open to be decided on its own merits uninfluenced by any finding or observation of the civil court in the impugned decision, if any.

7. In the mean time, the counsel for the respondents submits, on instructions, that the respondents will permit the petitioners to use the passage only as a foot way and not to ply carts and trucks or such heavy vehicles. That assurance is accepted.

8. Petition is disposed of on the above terms. No order as to costs.

(A.M. KHANWILKAR, J.)